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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,518	05/09/2005	Gunther Beisel	FI-52PCT	4424
40570	7590	06/25/2007		
FRIEDRICH KUEFFNER 317 MADISON AVENUE, SUITE 910 NEW YORK, NY 10017			EXAMINER HENRY, MICHAEL C	
			ART UNIT	PAPER NUMBER
			1623	
			MAIL DATE	DELIVERY MODE
			06/25/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/511,518	Applicant(s) BEISEL, GUNTHER	
	Examiner Michael C. Henry	Art Unit 1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6, 7 and 12-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 7, 12-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/26/07 has been entered.

The following office action is a responsive to the Amendment filed, 03/26/07.

The amendment filed 03/26/07 affects the application, 10/511,518 as follows:

Claims 1, 7, 14, 15 have been amended. Claim 5 has been canceled.

The responsive is contained herein below.

Claims 1-4, 6, 7, 12-15 are pending in application

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7, 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase “is formed of.... tablets, capsules ...” in claim 7 is a phrase which renders the claim indefinite. More specifically, it is unclear how the agent or composition could be “formed of tablets or capsules as opposed to being “formed as ... tablets or capsules”, or “in the form of ... tablets or capsules”.

The phrase “regulating cholesterol balance” in claims 13 is a phrase which renders the

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claim indefinite. More specifically, it is unclear how the administration of said composition can regulate cholesterol balance since the regulation of cholesterol requires both increasing and decreasing the cholesterol and would involve opposite mechanism actions. That is, said composition cannot have the effect of increasing and decreasing cholesterol simultaneously.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 14, 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Young et al. (GB 1302275).

In claim 1, applicant claims an “Agent for producing a satiety effect and for weight loss consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the agent is present as an aluminum salt, and wherein the agent also contains active ingredients. Young et al. disclose applicant’s agent consisting of a porous gel of the anionic polymer (alginate), wherein the agent is present as an aluminum salt (aluminum alginate) and wherein aluminum ions (active ingredients) are incorporated fruit material that is encapsulated (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and claim 1). Young et al.’s agent is a reconstructed or simulated food product that comprises fruit pulp or puree encapsulated in a skin of aluminum alginate gel (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and claim 1). It should be noted that the examiner gives little weight to the intended use of the agent since it is well settled that “intended use” of a composition or product, e.g., for producing a satiety effect

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for weight loss, does not further limit claims drawn to a composition or product. See, e.g., *Ex parte Marsham*, 2 USPQ2d 1647 (1987) and *In re Hack* 114, USPQ 161. Furthermore, since Young et al.'s agent consist of the same gel of the same anionic polymer aluminum salt as applicant's agent (and no other different or distinguishing ingredients) then Young et al.'s agent should inherently provide the same satiety or weight loss effect as applicant's agent. In addition, Young et al.'s disclose that their alginate gel can behave as a semipermeable (page 2, col. 1, lines 14-19). This implies that the alginate gel is porous. Claim 2 is drawn to an agent according to claim 1, wherein the agent is present in compressed form. Young et al. disclose applicant's agent, wherein the agent is present in compressed form (encapsulated form) (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and claim 1). It should be noted that the examiner considers Young et al.'s encapsulated form of the said agent a compressed form, since said agent is shaped (compressed) into an encapsulated form. Claim 3, which is drawn to an agent according to claim 1, wherein the agent contains alginate or pectin or a combination thereof as the anionic polymer, is also anticipated by Young et al., since Young et al. agent contains aluminum alginate (see page 1, col. 1, lines 27-41; see page 1, col. 1, lines 11-22 and claim 1). Claim 4, which is drawn to an agent according to claim 1, wherein the agent is present as an aluminum alginate, aluminum pectinate, or combination thereof, is also anticipated by Young et al., since Young et al. agent is present as aluminum alginate (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and claim 1). Claim 6 is drawn said agent according to claim 1, wherein the agent also contains active ingredients that include vitamins, trace elements, or medicinal compounds. Young et al. disclose applicant's agent, wherein the agent also contains incorporated aluminum or calcium ion (trace elements or active ingredients) (see page

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1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and claims 1 and 6). Claim 7 is drawn to an agent for producing a satiety effect for weight loss consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the agent is present as an aluminum salt, wherein the agent is formed of one of the group consisting of: tablets, capsules, coated tablets, granulates, or powders. Young et al. disclose applicant's agent, wherein the agent is in the form of capsules (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and claim 1). Claims 14 and 15 which are drawn to a method for producing a composition comprising adding to the composition an agent consisting of a dried, porous gel or foam of at least one anionic polymer, wherein the agent is present as an aluminum salt are also anticipated by Young et al., since Young et al. also use said agent contains aluminum alginate (see col. 1, lines 27-41).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Young et al. (GB 1302275).

In claim 12, applicant claims "a method of producing a satiety effect and for weight loss, comprising providing an agent consisting of a dried, porous gel or foam of at least one anionic polymer; and ingesting the agent.

Young et al. disclose applicant's composition consisting of porous gel or foam of at least one anionic polymer (see page 1, col. 1, lines 27-41; see also page 1, col. 1, lines 11-22 and

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claim 1). Furthermore, Young et al. disclose that said composition is edible. Young fails to disclose that the composition can provide a satiety effect. However, Young et al.'s composition should also produce a satiety effect based on the amount consumed of the composition, the kind of individual that consumes said composition and the appetite of the consumer.

It would have been obvious to one having ordinary skill in the art, at the time the claimed invention was made to produced a satiety effect by consuming have consumed Young et al. composition, depending on factors such as the amount consumed of the composition, the kind of individual that consumes said composition and the appetite of the consumer.

One having ordinary skill in the art would have been motivated to produced a satiety effect by consuming have consumed Young et al. composition, depending on factors such as the amount consumed of the composition, the kind of individual that consumes said composition and the appetite of the consumer.

Response Arguments

Applicant's arguments with respect to claims 1-4, 6, 7, 12-15 have been considered but are not found convincing.

The applicant argues that the reference to Young et al. discloses the alginates merely as a shielding. The reference nowhere mentions that the layer of alginates may contain additional materials. On the contrary however, alginate contains or encapsulates the active ingredient, aluminum (see page 1, col. 1, lines 27-41).

The applicant argues that that aluminum or calcium ions do not constitute "active ingredients", but rather are part of the alginate layer (alginate = set of alginate acid with a metal ion, for example, calcium or aluminum); also, when considering the description disclosed by the

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reference, it is submitted that those skilled in the art would not be listing calcium or aluminum as active ingredients. On the contrary, aluminum or calcium ions that are encapsulated within the alginate layer (i.e., they are not part of alginate layer) do constitute "active ingredients" (see page 1, col. 1, lines 27-41). Furthermore, applicant claims trace elements as active ingredient (see applicant's claim 6) and aluminum is considered a trace element.

The applicant argues that in contrast, in the presently claimed invention the anionic polymer is not provided for encapsulation, but instead forms on itself the inventive agent. However, the intended use of the agent is does not alter the agent, limit the agent or composition claimed. In fact, applicant like Young also claims his said agent or composition capsule form (see claim 7).

The applicant argues that Claim 7 as amended, on the other hand, refers to the physical shape in which the agent is present. The reference to Young et al discloses an alginate used as a shielding for something else. Claim 7 as amended in the present application, on the other hand, discloses an agent which is composed exclusively of alginate; consequently, a capsule of the agent according to the present invention will include a capsule of the agent, i.e., the anionic polymer surrounded by something else (similar to the coated tablets). However, the tablets, granulates or powder consist entirely of the agent. This is clear to those skilled in the art.

On the contrary, applicant's agent or composition as claimed does not limit or exclude the agent from being a layer or shield that is in capsule form especially since applicant's claim 7 includes the agent in capsule form. Furthermore, the claim does not recite or require that a capsule of the agent include the anionic polymer surrounded by something else (similar to the coated tablets) and exclude the agent from being a layer or shield that is in capsule form.


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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Henry whose telephone number is 571-272-0652. The examiner can normally be reached on 8.30am-5pm; Mon-Fri. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia A. Jiang can be reached on 571-272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael C. Henry


Shaojia Anna Jiang, Ph.D.
Supervisory Patent Examiner
Art Unit 1623

June 19, 2007.